

ASSEMBLY BILL

No. 1126

Introduced by Assembly Member Eng

February 23, 2007

An act to amend Sections 1987.1, 2020.510, 2025.240, 2025.270, 2030.020, 2030.260, 2031.020, 2031.030, 2031.260, 2033.020, and 2033.250 of, and to add Sections 1170.8 and 1170.9 to, the Code of Civil Procedure, relating to civil discovery.

LEGISLATIVE COUNSEL'S DIGEST

AB 1126, as introduced, Eng. Civil discovery: unlawful detainer: subpoenas.

Existing law specifies the procedural rules applicable to the conduct of discovery in civil actions. Existing law sets forth various summary proceedings for use in civil actions involving the possession of real property, including actions for unlawful detainer.

This bill would provide that, in any action under the above summary proceedings, a discovery motion may be made at any time upon giving 5 days' notice.

The bill would require the Judicial Council to adopt rules prescribing the time for the filing and service of opposition and reply papers relating to specified motions filed in connection with the above summary proceedings.

The bill would allow a plaintiff in the above summary proceedings to propound interrogatories, make a demand for inspection, and make requests for admission without leave of court at any time that is 5 days after service of the summons on, or appearance by, the relevant party, whichever occurs first. The bill would make related changes to the procedures governing discovery in those summary proceedings.

Existing law accords certain rights and protections to a consumer whose personal records are subject to a subpoena that is directed to a witness with whom the consumer has transacted business or who has acted as agent or fiduciary of the consumer. Under existing law, those rights and protections include the right to move to quash the subpoena, the power of the court to make an order appropriate to protect the consumer, the requirement that the party serving a deposition subpoena serve on that consumer specified documents, including a notice of the deposition and a notice regarding privacy rights, and the requirement that service of the subpoena be accompanied by one of 2 documents relating to the consumer's privacy rights.

This bill would, in addition, extend these rights and protections to an employee who is or has been employed by a witness subject to a subpoena, and to an individual who is or has been represented by a labor organization that is a witness subject to a subpoena, when the subpoena covers records pertaining to the employee.

The bill would require that, if the party giving notice of a deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer or employment records of an employee, the deposition be scheduled for a date at least 20 days after issuance of that subpoena.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1170.8 is added to the Code of Civil
- 2 Procedure, to read:
- 3 1170.8. In any action under this chapter, a discovery motion
- 4 may be made at any time upon giving five days' notice.
- 5 SEC. 2. Section 1170.9 is added to the Code of Civil Procedure,
- 6 to read:
- 7 1170.9. The Judicial Council shall adopt rules, not inconsistent
- 8 with statute, prescribing the time for filing and serving opposition
- 9 and reply papers, if any, relating to a motion under Section 1167.4,
- 10 1170.7, or 1170.8.
- 11 SEC. 3. Section 1987.1 of the Code of Civil Procedure is
- 12 amended to read:
- 13 1987.1. When a subpoena requires the attendance of a witness
- 14 or the production of books, documents or other things before a

1 court, or at the trial of an issue therein, or at the taking of a
2 deposition, the court, upon motion reasonably made by the party,
3 the witness, ~~or any consumer described in Section 1985.3, or any~~
4 *employee described in Section 1985.6*, or upon the court's own
5 motion after giving counsel notice and an opportunity to be heard,
6 may make an order quashing the subpoena entirely, modifying it,
7 or directing compliance with it upon such terms or conditions as
8 the court shall declare, including protective orders. In addition,
9 the court may make any other order as may be appropriate to
10 protect the parties, the witness, ~~or the consumer, or the employee~~
11 from unreasonable or oppressive demands, including unreasonable
12 violations of ~~a witness's or consumer's~~ *the right of privacy of the*
13 *witness, consumer, or employee*. Nothing herein shall require any
14 ~~witness or party~~ *person* to move to quash, modify, or condition
15 any subpoena duces tecum of personal records of any consumer
16 served under paragraph (1) of subdivision (b) of Section 1985.3
17 *or employment records of any employee served under paragraph*
18 *(1) of subdivision (b) of Section 1985.6*.

19 SEC. 4. Section 2020.510 of the Code of Civil Procedure is
20 amended to read:

21 2020.510. (a) A deposition subpoena that commands the
22 attendance and the testimony of the deponent, as well as the
23 production of business records, documents, and tangible things,
24 shall:

25 (1) Comply with the requirements of Section 2020.310.

26 (2) Designate the business records, documents, and tangible
27 things to be produced either by specifically describing each
28 individual item or by reasonably particularizing each category of
29 item.

30 (3) Specify any testing or sampling that is being sought.

31 (b) A deposition subpoena under subdivision (a) need not be
32 accompanied by an affidavit or declaration showing good cause
33 for the production of the documents and things designated.

34 (c) ~~Where~~ *If*, as described in Section 1985.3, the person to whom
35 the deposition subpoena is directed is a witness, and the business
36 records described in the deposition subpoena are personal records
37 pertaining to a consumer, the service of the deposition subpoena
38 shall be accompanied either by a copy of the proof of service of
39 the notice to the consumer described in subdivision (e) of Section
40 1985.3, or by the consumer's written authorization to release

1 personal records described in paragraph (2) of subdivision (c) of
2 Section 1985.3.

3 *(d) If, as described in Section 1985.6, the person to whom the*
4 *deposition subpoena is directed is a witness and the business*
5 *records described in the deposition subpoena are employment*
6 *records pertaining to an employee, the service of the deposition*
7 *subpoena shall be accompanied either by a copy of the proof of*
8 *service of the notice to the employee described in subdivision (e)*
9 *of Section 1985.6, or by the employee's written authorization to*
10 *release personal records described in paragraph (2) of subdivision*
11 *(c) of Section 1985.6.*

12 SEC. 5. Section 2025.240 of the Code of Civil Procedure is
13 amended to read:

14 2025.240. (a) The party who prepares a notice of deposition
15 shall give the notice to every other party who has appeared in the
16 action. The deposition notice, or the accompanying proof of
17 service, shall list all the parties or attorneys for parties on whom
18 it is served.

19 (b) ~~Where~~ *If*, as defined in subdivision (a) of Section 1985.3 *or*
20 *subdivision (a) of Section 1985.6*, the party giving notice of the
21 deposition is a subpoenaing party, and the deponent is a witness
22 commanded by a deposition subpoena to produce personal records
23 of a consumer *or employment records of an employee*, the
24 subpoenaing party shall serve on that consumer *or employee* all
25 of the following:

26 (1) A notice of the deposition.

27 (2) The notice of privacy rights specified in subdivision (e) of
28 Section 1985.3 ~~and in or in subdivision (e) of Section 1985.6.~~

29 (3) A copy of the deposition subpoena.

30 (c) If the attendance of the deponent is to be compelled by
31 service of a deposition subpoena under Chapter 6 (commencing
32 with Section 2020.010), an identical copy of that subpoena shall
33 be served with the deposition notice.

34 SEC. 6. Section 2025.270 of the Code of Civil Procedure is
35 amended to read:

36 2025.270. (a) An oral deposition shall be scheduled for a date
37 at least 10 days after service of the deposition notice. ~~If, as defined~~
38 ~~in subdivision (a) of Section 1985.3, the party giving notice of the~~
39 ~~deposition is a subpoenaing party, and the deponent is a witness~~
40 ~~commanded by a deposition subpoena to produce personal records~~

1 of a consumer, the deposition shall be scheduled for a date at least
2 20 days after issuance of that subpoena.

3 (b) Notwithstanding subdivision (a), in an unlawful detainer
4 action or other proceeding under Chapter 4 (commencing with
5 Section 1159) of Title 3 of Part 3, an oral deposition shall be
6 scheduled for a date at least five days after service of the deposition
7 notice, but not later than five days before trial.

8 (c) Notwithstanding subdivisions (a) and (b), if, as defined in
9 Section 1985.3 or 1985.6, the party giving notice of the deposition
10 is a subpoenaing party, and the deponent is a witness commanded
11 by a deposition subpoena to produce personal records of a
12 consumer or employment records of an employee, the deposition
13 shall be scheduled for a date at least 20 days after issuance of that
14 subpoena.

15 (e)

16 (d) On motion or ex parte application of any party or deponent,
17 for good cause shown, the court may shorten or extend the time
18 for scheduling a deposition, or may stay its taking until the
19 determination of a motion for a protective order under Section
20 2025.420.

21 SEC. 7. Section 2030.020 of the Code of Civil Procedure is
22 amended to read:

23 2030.020. (a) A defendant may propound interrogatories to a
24 party to the action without leave of court at any time.

25 (b) A plaintiff may propound interrogatories to a party without
26 leave of court at any time that is 10 days after the service of the
27 summons on, or in unlawful detainer actions five days after service
28 of the summons on or appearance by, that party, whichever occurs
29 first.

30 (c) Notwithstanding subdivision (b), in an unlawful detainer
31 action or other proceeding under Chapter 4 (commencing with
32 Section 1159) of Title 3 of Part 3, a plaintiff may propound
33 interrogatories to a party without leave of court at any time that
34 is five days after service of the summons on, or appearance by,
35 that party, whichever occurs first.

36 (e)

37 (d) Notwithstanding subdivision (b) subdivisions (b) and (c),
38 on motion with or without notice, the court, for good cause shown,
39 may grant leave to a plaintiff to propound interrogatories at an
40 earlier time.

SEC. 8. Section 2030.260 of the Code of Civil Procedure is amended to read:

2030.260. (a) Within 30 days after service of interrogatories, ~~or in unlawful detainer actions within five days after service of interrogatories~~ the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

~~In unlawful detainer actions,~~

(b) *Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom the interrogatories are propounded shall have five days from the date of service to respond, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.*

~~(b)~~

(c) The party to whom the interrogatories are propounded shall also serve a copy of the response on all other parties who have appeared in the action. On motion, with or without notice, the court may relieve the party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome.

SEC. 9. Section 2031.020 of the Code of Civil Procedure is amended to read:

2031.020. (a) A defendant may make a demand for inspection without leave of court at any time.

(b) A plaintiff may make a demand for inspection without leave of court at any time that is 10 days after the service of the summons on, ~~or in unlawful detainer actions within five days after service of the summons on~~ or appearance by, the party to whom the demand is directed, whichever occurs first.

(c) *Notwithstanding subdivision (b), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a plaintiff may make a demand for inspection without leave of court at any time that is five days after service of the summons on, or appearance by, the party to whom the demand is directed, whichever occurs first.*

1 (e)

2 (d) Notwithstanding ~~subdivision (b)~~ subdivisions (b) and (c),
3 on motion with or without notice, the court, for good cause shown,
4 may grant leave to a plaintiff to make an inspection demand at an
5 earlier time.

6 SEC. 10. Section 2031.030 of the Code of Civil Procedure is
7 amended to read:

8 2031.030. (a) A party demanding an inspection shall number
9 each set of demands consecutively.

10 (b) In the first paragraph immediately below the title of the case,
11 there shall appear the identity of the demanding party, the set
12 number, and the identity of the responding party.

13 (c) Each demand in a set shall be separately set forth, identified
14 by number or letter, and shall do all of the following:

15 (1) Designate the documents, tangible things, or land or other
16 property to be inspected either by specifically describing each
17 individual item or by reasonably particularizing each category of
18 item.

19 (2) Specify a reasonable time for the inspection that is at least
20 30 days after service of the demand, ~~or in unlawful detainer actions~~
21 ~~at least five days after service of the demand~~, unless the court for
22 good cause shown has granted leave to specify an earlier date. *In*
23 *an unlawful detainer action or other proceeding under Chapter 4*
24 *(commencing with Section 1159) of Title 3 of Part 3, the demand*
25 *shall specify a reasonable time for the inspection that is at least*
26 *five days after service of the demand, unless the court, for good*
27 *cause shown, has granted leave to specify an earlier date.*

28 (3) Specify a reasonable place for making the inspection,
29 copying, and performing any related activity.

30 (4) Specify any related activity that is being demanded in
31 addition to an inspection and copying, as well as the manner in
32 which that related activity will be performed, and whether that
33 activity will permanently alter or destroy the item involved.

34 SEC. 11. Section 2031.260 of the Code of Civil Procedure is
35 amended to read:

36 2031.260. (a) Within 30 days after service of an inspection
37 demand, ~~or in unlawful detainer actions within five days of an~~
38 ~~inspection demand~~, the party to whom the demand is directed shall
39 serve the original of the response to it on the party making the
40 demand, and a copy of the response on all other parties who have

1 appeared in the action, unless on motion of the party making the
2 demand, the court has shortened the time for response, or unless
3 on motion of the party to whom the demand has been directed, the
4 court has extended the time for response. ~~In unlawful detainer~~
5 ~~actions,~~

6 *(b) Notwithstanding subdivision (a), in an unlawful detainer*
7 *action or other proceeding under Chapter 4 (commencing with*
8 *Section 1159) of Title 3 of Part 3, the party to whom an inspection*
9 *demand is directed shall have at least five days from the ~~dates~~ date*
10 *of service of the demand to respond, unless on motion of the party*
11 *making the demand, the court has shortened the time for the*
12 *response, or unless on motion of the party to whom the demand*
13 *has been directed, the court has extended the time for response.*

14 SEC. 12. Section 2033.020 of the Code of Civil Procedure is
15 amended to read:

16 2033.020. (a) A defendant may make requests for admission
17 by a party without leave of court at any time.

18 (b) A plaintiff may make requests for admission by a party
19 without leave of court at any time that is 10 days after the service
20 of the summons on, ~~or, in unlawful detainer actions, five days after~~
21 ~~the service of the summons on,~~ or appearance by, that party,
22 whichever occurs first.

23 *(c) Notwithstanding subdivision (b), in an unlawful detainer*
24 *action or other proceeding under Chapter 4 (commencing with*
25 *Section 1159) of Title 3 of Part 3, a plaintiff may make requests*
26 *for admission by a party without leave of court at any time that is*
27 *five days after service of the summons on, or appearance by, that*
28 *party, whichever occurs first.*

29 ~~(e)~~

30 *(d) Notwithstanding ~~subdivision (b)~~ subdivisions (b) and (c),*
31 *on motion with or without notice, the court, for good cause shown,*
32 *may grant leave to a plaintiff to make requests for admission at an*
33 *earlier time.*

34 SEC. 13. Section 2033.250 of the Code of Civil Procedure is
35 amended to read:

36 2033.250. (a) Within 30 days after service of requests for
37 admission, ~~or in unlawful detainer actions within five days after~~
38 ~~service of requests for admission,~~ the party to whom the requests
39 are directed shall serve the original of the response to them on the
40 requesting party, and a copy of the response on all other parties

1 who have appeared, unless on motion of the requesting party the
2 court has shortened the time for response, or unless on motion of
3 the responding party the court has extended the time for response.

4 ~~In unlawful detainer actions,~~

5 *(b) Notwithstanding subdivision (a), in an unlawful detainer*
6 *action, the party to whom the request is directed shall have at least*
7 *five days from the date of service to respond, unless on motion of*
8 *the requesting party the court has shortened the time for response,*
9 *or unless on motion of the responding party the court has extended*
10 *the time for response.*